

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

RICHARD A. CLARK and JENNIFER
CLARK,

Plaintiffs,

v.

Case No. 3:15-cv-00447-JPG-RJD

RIVER METALS RECYCLING, LLC and
SIERRA INTERNATIONAL MACHINERY,
LLC,

Defendants.

MEMORANDUM & ORDER

J. PHIL GILBERT, DISTRICT JUDGE

In this products liability case, one of the two remaining defendants—River Metals Recycling, LLC (“River Metals”)—has filed an affidavit for Certification of Manufacturer pursuant to 735 ILCS 5/2-621. (Doc. 143.) That statute states:

In any product liability action based on any theory or doctrine commenced or maintained against a defendant or defendants other than the manufacturer, that party shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing injury, death or damage . . . Once the plaintiff has filed a complaint against the manufacturer or manufacturers, and the manufacturer or manufacturers have or are required to have answered or otherwise pleaded, the court shall order the dismissal of a product liability action based on any theory or doctrine against the certifying defendant or defendants

735 ILCS 5/2-621(a) & (b). Specifically, River Metals argues that developments in supplemental discovery have pointed to co-defendant Sierra International Machinery, LLC (“Sierra”) as the manufacturer of the product in question, so the Court should now dismiss River Metals from this case.

The Court will not dismiss River Metals pursuant to 735 ILCS 5/2-621. The statute states that a party should file the requisite affidavit “**upon** answering or otherwise pleading” 735 ILCS 5/2-621(a). But here, River Metals filed the affidavit over two years after they filed their answer and several months after their second motion for summary judgment. (*See* Docs. 17, 98, 143.) This case will continue to proceed as instructed in the Court’s previous order: once the supplemental discovery period has ended, the Court will address both River Metals’s and Sierra’s motions for summary judgment in one order. (*See* Doc. 219.)

IT IS SO ORDERED.

DATED: APRIL 27, 2018

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE